



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, LRE, FFT

Introduction

This hearing was convened from the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), to cancel a Two Month Notice to End Tenancy for Landlord's Use dated June 16, 2021 ("Two Month Notice"); for a monetary claim of \$10,862.50 for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; to suspend or restrict the Landlord's right to enter; and to recover the \$100.00 cost of her Application filing fee.

The Tenant, the Landlord, M.K., and counsel for the Landlord, D.M. ("Counsel"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. Counsel provided his email address, as well. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Counsel requested that his client be added as a Party, since she is the owner of the residential property, and has recently taken over as the property manager of the residential property, as well. Counsel referred me to Rules 7.12 and 7.13 as authority for this request. While I may unilaterally determine that another person should be added as a party, I asked the Tenant for her comments on this request, and she agreed that it would be appropriate for M.K. to be added as a party. Accordingly, and pursuant to Rules 7.12 and 7.13, I add M.K. as a Party to this proceeding from this point forward.

The Parties discussed the possibility of settlement of the issues; however, they were not able to arrive at an agreement, therefore, the proceeding continued.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant had indicated different matters of dispute on the application, the most urgent of which is the application to set aside a Two Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the Two Month Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2017, with a current monthly rent of \$2,152.50, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlord a security deposit or a pet damage deposit.

The Landlord confirmed the contents of the Two Month Notice, which she submitted to

the RTB. The Two Month Notice states that it was signed and dated June 16, 2021, it has the rental unit address, it was served by leaving a copy in the mailbox or mail slot at the rental unit on June 16, 2021, it has an effective vacancy date of September 1, 2021, and it was served on the grounds that the Landlord, M.K., will occupy the rental unit.

As the burden of proof in this matter is on the Landlord, I asked her why I should confirm the Two Month Notice, rather than cancel it, as the Tenant has requested. Counsel asked the Landlord a series of questions that elicited the following testimony.

Counsel asked the Landlord where she is currently living and what her intention is for that property. The Landlord gave the address where she is currently living and she said she intends to sell this property, because she wants to move into another smaller property in the town where she currently resides. However, that property will not be ready until the late summer or early fall of next year.

In her written submissions, the Landlord said the following about the reason for having to move into the rental unit.

This move into [the residential property] is based on what is best for me financially. Why would I want to move into a suite when I currently own a nice home with an ocean view? I have endured financial hardship and as a result am selling my current home. I have purchased another home that is significantly less than what my own property is worth, for reasons that I don't feel are necessary to disclose.

I have a perfectly good home in [the residential property], that I want to move into and I should have the right to do that. [The Tenant's] refusal to leave and this arbitration has caused hardship on my part. I have delayed selling my house because when it sells I will be homeless, as she is still in there. I have spent a lot of money preparing the house for sale, in anticipation of recouping those funds from the sale proceeds. I had planned to sell it in the height of that summer market, but with so much uncertainty on the tenancy issue and waiting for this arbitration, I have held off. I am currently sitting in limbo. But at this point I am listing my house as I cannot wait any longer and have been in touch with a realtor.

Counsel continued to ask the Landlord questions, such as what she will do with the residential property with two suites and seven bedrooms in all. The Landlord said: "I intend to reside upstairs, because I need the whole space. I plan on living upstairs and

the downstairs will be used for my business use.” The Landlord said that there is a stairway that connects the upper and lower units, and that she is going to use the entire property as her house. The Landlord said that she has listed her current residence for sale with a realtor and that she has already had a showing

I asked the Tenant why I should cancel the Two Month Notice and allow the tenancy to continue. The Tenant said:

I don't think she's selling her house. It was for sale, but the deal fell through. [P.P.] said, 'I'll give you 4 months notice and a free month's rent. If you don't take the deal, my mother will get involved.' I've seen no evidence that she's moving.

The Tenant said that she has found a place to move to on November 1, 2021, but that she has three kids. She said she has been looking for a place since she received the Two Month Notice. She said she has started to move her belongings into storage.

I advised the Parties of the consequences of a landlord not pursuing the grounds for the eviction, as set out in section 51 of the Act. Section 51 sets out a tenant's right to compensation, after the landlord serves the tenant with a notice to end the tenancy under section 49 – landlord's use of property. Pursuant to section 51(2), such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord **if** (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, **and** (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Landlord said:

I don't understand why she doesn't believe my house is for sale. I have been informed about not holding up my end with not moving in. I have said to both tenants that this is what I'm planning to do. I don't understand why they don't believe me. I listed my house, which means having strangers in my house, dealing with my dog, having it tidy all the time.... I would not go to this much trouble just for a little more rent. My house is for sale and that is the truth.

I asked the Parties for their last statements before the hearing ended, and they said the following. Counsel said:

There's uncontradicted evidence that [the Landlord] plans to move into the house – it also make logical sense – having to sell the house she's in now, and her other house isn't available for another year. It stands to reason that she would need to move in.

The Tenant said doesn't believe [the Landlord's] moving in, but *she* has been looking and has a house for November 1st, so the Tenant is not acting in good faith, ...she has no basis to oppose it.

The Tenant said:

Regarding what he just said, me looking for a place is because she rents out the shop in the backyard. I still don't believe she's moving in here. I want to get out of here as soon as possible, due to the drug dealers I have on my road every day.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party.

For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

[emphasis added]

I find that the Two Month Notice is consistent with section 52, as to form and content. I find that the Landlord's testimony indicates that she has a financial need to sell her current residence, but that her future residence will not be ready before the current residence needs to be sold. As such, the Landlord explained that she needs somewhere to live in the meantime. The Landlord owns the residential property in which the rental unit is situated, and as a result she is entitled to move into this property upon giving the current tenant(s) proper notice under the Act.

I find that the Landlord gave the Tenant proper notice for an effective vacancy dates of September 1, 2021. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I, therefore, grant the Landlord an Order of Possession for the rental unit, pursuant to section 55. As the effective vacancy date of the Two Month Notice has passed, I find the Tenant is overholding the rental unit. Accordingly, **the Order of Possession is effective two days after service of this Order** on the Tenant.

In order to provide clarity for both Parties, and in the hopes of preventing future disputes, the Parties should be aware that pursuant to section 51 of the Act, a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. The Tenant may withhold this amount from the last month's rent or otherwise recover this amount from the Landlord, if rent for the last month has already been paid.

Conclusion

The Tenant is unsuccessful in her Application, as the Landlord provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession for the rental unit to the Landlord **effective two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 08, 2021

Residential Tenancy Branch